SINGAPORE REPORTS

PHILIP HOALIM v. COLLECTOR OF LAND REVENUE, SINGAPORE

[C.A. (Wee Chong Jin C.J., Chua & Tan Ah Tah JJ.) March 18, 1975]

[Singapore — Appeal No. A.B.44 of 1971]

Land Law — Original Crown grant — Construction — Condition and covenant — Rule against perpetuities — Registration of Deeds Act (Cap. 281).

An original Crown grant made in 1860 contained a provision as follows:

"Subject nevertheless to the conditions hereinafter mentioned that is to say the said Gilbert Angus for himself his Heirs Executors Administrators and Assigns Doth hereby covenant and agree to surrender and make over unto the said Secretary of State for India in Council or his Successors in Office the said Land and premises should it at any time be required for public purposes, on a requisition made to him to that effect in writing and upon the payment to him the said Gilbert Angus His Heirs Executors Administrators and Assigns by the said Secretary of State for India in Council or his Successors in office of all sum or sums of money that the said Gilbert Angus his Heirs Administrators Executors or Assigns may or shall have incurred expended (sic) upon the said land."

The questions for determination by the court were as follows:

"(i) Is the said provision a covenant creating an interest in land, or is it a condition or is it both, and is the interest, if any, created thereby legal or equitable?

(ii) Is the interest, if any, created by the said provision void by reason of the operation of the rule against perpetuities and in particular:

(a) does the rule apply at all (apart from statutory enactment) to legal rights of re-entry for condition broken;

(b) does the rule apply to equitable rights to enforce a covenant for a reconveyance against the land owner who is successor in title of the covenantor;

(c) if either (a) or (b) is answered in the affirmative does the rule apply in Singapore to provisions contained in grants by the Crown or its successor the State?

(iii) If the said provision constitutes a valid common law condition is the question of notice, actual or constructive, material?

(iv) On whom is the burden of proof of the existence or absence of actual notice of the said provision?

(v) On the assumption that the appellant had no actual notice of the said provision did he nevertheless have constructive notice thereof? And is the appellant bound in view of the non-registration of the original grant?

(vi) In the event that the said provision is binding upon the appellant in whom are the rights of the Secretary of State under the original grant now vested and can they be exercised?

(vii) In the event that the said rights can be exercised how are the words in the said provision — 'all sum or sums of money that the said Gilbert Angus His Heirs Administrators Executors or Assigns may or shall have incurred expended upon the said land (sic)' to be construed."

Held: (1) the words 'subject nevertheless to the conditions hereinafter mentioned' in the said provision import a condition and the whole provision amounts both to a condition and a covenant creating in an interest in land, both legal and equitable;

(2) the rule against perpetuities was inapplicable in 1860 to the original Crown grant;

(3) the original Crown grant is clearly an 'assurance' and the Government is by necessary implication bound by the provisions of section 4 of the Registration of Deeds Act and indeed by the whole Act;

(4) the appellant was therefore not bound in view of the non-registration of the original grant;

(5) the words in the provision should be construed to mean the actual purchase price paid by the owner at the time of the exercise by the Government of the right to repurchase and any other sum or sums of money he has subsequently expended upon the land.

Cases referred to:-

(1) *In re thee Trustees of Hollis' Hospital and Hague's Contract* [1899] 2 Ch. 540.
(2) *In re Macleay* (1875) L.R. 20 Eq. 186.
(3) *Dunn* v. *Flood* (1883) 25 Ch.D. 629.
(4) *In re Da Costa* [1912] 1 Ch. 337.
(5) *Hopper & Ors.* v. *The Corporation of Liverpool* [1944] Sol. J. 213.
(6) *Attorney-General* v. *Cummins* [1906] 1 I.R. 406.
(7) *Walsh & Ors.* v. *Wightmanand Arthur* [1927] N.I. 1.
(8) *Cooper* v. *Stuart* 14 App. Cas. 286.
(9) *Cooper* v. *Stuart* 7 N.S.W. Eq. 1.
(10) *Hooper* v. *Bromet* 89 L.T. 37.
(11) *Llewellyn* v. *Jersey* 11 M. & W. 183.

COURT OF APPEAL.

Y. R. Jumabhoy and *Kirpal Singh* for the appellant.

G. Starforth Hill for the respondent.

Wee Chong Jin C.J. (delivering the judgment of the court): This is a case stated by the Appeals Board constituted under the provisions of section 19(1) of the Land Acquisition Act (Chapter 272) on questions of law for the opinion of the court pursuant to the provisions of section 30 of the Act. The case stated, as required by that section, sets out the facts which are not in dispute and the questions of law on which the opinion of the court is sought. No decision has yet been made by the board.

The case stated arises out of an appeal by the appellant, Mr. Philip Hoalim, against an award of the Collector of Land Revenue of the sum of $67,500.00 in respect of Lot 285 of Mukim XXXIII, an island consisting of an area of 220 acres and generally known as Pulau Tekong Kechil. This island is part of the Republic of Singapore and is situated close to the south eastern coast of the main island of Singapore.

There are two main issues in that appeal, namely,

(i) is the market value of the property limited by the provisions contained in the original Crown grant of the property in 1860 and, if so, to what extent; and

(ii) if not, what is the true market value of the property at the relevant date.

The opinion of the court is sought only in connection with the first of these questions, the second having been the subject of evidence heard by the board. On the first question the Collector's case is that the value of the acquired land is limited by the terms of the original Crown grant. The appellant's case is to the contrary and that the land should be valued at its ordinary open market value.

All the relevant documents relating to the property are contained in the annexures to the case stated. The material dates are as follows:—

26th April, 1860 — Crown grant to Angus (pages 20-22)
15th March, 1878 — Angus to Sultan of Johore (pages 23 and 24)

7th October, 1951 — Administrator of Sultan of Johore to Hoalim and Liew Kong Kee (pages 25-27)

16th June, 1952 — Liew Kong Kee to Ng Cheng Koon (½ share) (pages 28 and 29)

12th July, 1954 — Ng Cheng Koon to Hoalim (½ share) (pages 31 and 32)

At the relevant date, it is not in dispute that the appellant was the sole owner of the entire property. It is also not in dispute that the original Crown grant is not registered at the Registry of Deeds. It is also now not in dispute that the rights of the Crown under the original grant are now vested in the Government of Singapore and can be exercised by the Government if the provision in the grant hereinafter set out is binding on the appellant.

The original grant contains a provision as follows (page 1):—

"Subject nevertheless to the conditions hereinafter mentioned that is to say the said Gilbert Angus for himself his Heirs Executors Administrators and Assigns Doth hereby covenant and agree to surrender and make over unto the said Secretary of State for India in Council or his Successors in Office the said Land and premises should it at any time be required for public purposes, on a requisition made to him to that effect in writing and upon the payment to him the said Gilbert Angus His Heirs Executors Administrators and Assigns by the said Secretary of State for India in Council or his Successors in office of all sum or sums of money that the said Gilbert Angus his Heirs Administrators Executors or Assigns may or shall have incurred expended (sic) upon the said land."

The issue before the board on which the opinion of the court, by way of a Case Stated, is sought is, what is the effect of this provision and, if it has any effect, does it bind the appellant or purchasers from him, and if so with what result.

The Case Stated sets out the questions of law for the opinion of the court in the following terms:—

"(i) Is the said provision a covenant creating an interest in land, or is it a condition or is it both, and is the interest, if any, created thereby legal or equitable?

(ii) Is the interest, if any, created by the said provision void by reason of the operation of the rule against perpetuities and in particular:

(a) does the rule apply at all (apart from statutory enactment) to legal rights of re-entry for condition broken;

(b) does the rule apply to equitable rights to enforce a covenant for a reconveyance against the land owner who is successor in title of the covenantor;

(c) if either (a) or (b) is answered in the affirmative does the rule apply in Singapore to provisions contained in grants by the Crown or its successor the state?

(iii) If the said provision constitutes a valid common law condition is the question of notice, actual or constructive, material?

(iv) On whom is the burden of proof of the existence or absence of actual notice of the said provision?

(v) On the assumption that the appellant had no actual notice of the said provision did he nevertheless have constructive notice thereof? And is the appellant bound in view of the non-registration of the original grant?

(vi) In the event that the said provision is binding upon the appellant in whom are the rigths of the Secretary under the original grant now vested and can they be exercised?

(vii) In the event that the said rights can be exercised how are the words in the said provision — 'all sum or sums of money that the said Gilbert Angus His Heirs Administrators Executors or Assigns may or shall have incurred expended upon the said land (sic)' to be construed."

Question (i)

On behalf of the appellant it is contended that the provision is not a condition but is merely a covenant which, but for the Rule against Perpetuities, would have created only an equitable interest in land. The respondent, on the other hand, contends that the provision is not merely a covenant but also a condition and that the interest created thereby constitutes both a common law condition, i.e. a legal interest in land, and an equitable right under the covenant i.e. an equitable interest in land. It is however conceded by the respondent that the Rule against Perpetuities applies to equitable rights to enforce a covenant for re-conveyance against a land owner who is successor in title of the covenantor.

The said provision begins with the phrase "subject nevertheless to the conditions hereinafter mentioned. . ." It is not in dispute that, on the authorities, where the words used are "Provided always" or "Upon condition that" then the provision is a common law condition and not a covenant or mere contractual term. Mr. Jumabhoy, on behalf of the appellant, submits that as the provision does not contain words such as "Provided always" or "Upon condition that" the provision looked at as a whole should be construed to be a contractual term and not a common law condition.

Mr. Graham Hill, for the respondent, contends that the provision is not merely a covenant but also a condition so that a breach of the covenant to surrender would entitle the Crown to re-enter and resume ownership of the property. He contends that any other interpretation would give no force to the perfectly technical phrase "subject nevertheless to the conditions hereinafter mentioned" and that there is authority (see *Sheppard's* Touchstone, 122) that one and the same clause "may be also a condition and a covenant as if the words run thus: provided always, and the foeffee etc. doth covenant etc. that neither he nor his heirs shall do such an act, this is both a condition and a covenant". We accept the respondent's contention and in our opinion the words "subject nevertheless to the conditions hereinafter mentioned" in the said provision import a condition and the whole provision amounts both to a condition and a covenant creating an interest in land, both legal and equitable.

Question (ii)(a)

Mr. Jumabhoy contends that the Rule against Perpetuities applies to legal rights of re-entry for condition broken and relies on the English authorities which are referred to in *Morris and Leach* on Perpetuities, 2nd Edition at pages 210-218. Before referring to these authorities it would be useful to state what the Rule is and we adopt *Gray's* definition at section 201 of the 2nd edition of his book "Rule against Perpetuities" which runs as follows: "No interest is good unless it must vest, if at all, not later than twenty-one years after some life in being at the creation of the interest". It is a rule of the common law as decided by English judges and founded on public policy to protect the public against private wishes. It originated to enable free alienability of land and eventually developed into its present inflexible form controlling not only interests in land but also trusts of personalty.

In the case of *In re the Trustees of Hollis' Hospital and Hague's Contract*[1] Byrne J. was considering whether a condition in a deed of release dated May 18, 1726 which contained a proviso that if at any time thereafter the premises which had been conveyed by Hollis to trustees upon trust for the hospital or any part thereof should be employed or converted to or for any other uses, intents or purposes than those thereinbefore mentioned, then and from thenceforth all and every the premises thereinbefore conveyed should revert to the right heirs of Hollis party thereto.

Byrne J. held that the condition was in terms and form a true common law condition and was void as being obnoxious to the Rule against Perpetuities. The learned judge followed the dictum of Jessel M.R. in *In re Macleay*[2] and of North J. in *Dunn* v. *Flood*[3] and the observations of Baggallay L.J. on appeal in 28 Ch. 592 where the Lord Justice said: —

"This right of re-entry was held by Mr. Justice North to be void for remoteness. We have not heard counsel for the defendant, but, as at present advised I concur with Mr. Justice North that this right could not be enforced being void under the rule against perpetuities."

In the case of *In re Da Costa*[4] Eve J. followed *In re the Trustees of Hollis Hospital and Hague's Contract, supra.* In that case the testator devised all his real estate at Adelaide, South Australia to trustees upon trust during the lives of successive tenants for life to apply the income in a particular manner, and on the falling in of the last life tenancy to convey the real estate to the Council of the Church of England Collegiate School, Adelaide on the express condition that the Council published annually a statement of payments and receipts, and in case of default for six calendar months in the publication of such statement the disposition in favour of the school was thenceforth to cease and to go over to and enure for the sole benefit of such person or persons and for such public purpose as the Governor of South Australia should in writing direct. Eve J. held that the gift over and the condition were both bad, the latter being a common law condition subsequent, working a forfeiture on the condition coming into operation, and obnoxious to the Rule against Perpetuities.

In *Hopper and Others* v. *The Corporation of Liverpool*[5] the Vice-Chancellor Sir John Bennett said that he was bound by the decision of Byrne J. which was followed by Eve J. and said at page 215: —

"I cannot but think that if the rule against perpetuities applies to the possibility of reverter on a fee subject to a condition which may or may not happen, it must equally apply to the possibility of reverter on a fee limited to determine on an event which may or may not happen. I am therefore of opinion that the rule against perpetuities does apply in this case."

Mr. Graham Hill for the respondent concedes that the English authorities are against him but relies on two decisions of the Irish courts which have taken the view that the Rule against Perpetuities is inapplicable to common law conditional conveyances. He submits that the reasons behind the Irish decisions are better founded in history and more consistent with other doctrines of the law (especially those relating to leases and mortgages) than the arguments which led the English courts to take the opposite view. He urges us to accept the Irish decisions as the question has never been before our courts.

The first Irish case is *Attorney-General* v. *Cummins*[6] which was decided in 1895 but not reported until 1906 and, accordingly, not cited to Byrne J. in *In re Hollis Hospital* case, *supra,* and apparently not considered by the other English judges who followed *in re Hollis Hospital* case. The direct issue before the Irish King's Bench Division in *Attorney-General* v. *Cummins* was whether the Rule against Perpetuities applied to common law conditions subsequent. By Letters Patent a grant was made of quit rents amounting to about £500 to hold the same to the grantee his heirs and assigns till he or they should receive or be paid the sum of £500. Palles C. B. who delivered the judgment of the court said the grant passed the quit rents in fee subject to the condition determining the fee on making the payment mentioned. Under such a grant the grantee, until the happening of the determining event, had the whole estate in him, and the old common law doctrine was undoubtedly that a possibility of reverter — a possibility coupled with an interest — remained in the Crown as grantor. Palles C. B. said the grant in question operated at common law. It did not take effect under the Statute of Uses, and the modern Rule against Perpetuities never applied to common law conveyances. It was impossible that it could have applied because it had its origin in the Statute of Uses and the subject matter of that statute did not include conveyances other than to uses. The only mode by which the common law held that a previous estate ought to be determined before its natural expiration was by means of the annexation of a condition. But if a condition were annexed, then, on the happening of the stipulated event, the estate was defeated, and the donor or his heirs were entitled to enter, and, on entry, was in of his former estate. Palles C. B. went on to say:—

"If modern recognition of the common law elementary doctrine be required, it will be found, in the opinion of Lord Cairns (then Lord Chancellor) in the *Buckhurst Peerage* Case: 'The common law did understand one mode of putting an end to an estate which in the first instance appeared to be granted absolutely, that is to say, it understood the mode of terminating an estate by means of the annexation of a condition. If a condition was annexed to an estate which otherwise would have been absolute, then on the happening of the condition the estate was defeated. But then, my Lords, it was not defeated for the benefit of the remainderman; nor could a remainderman have been annexed to the condition. It was defeated as defeasible by or *for the donor* who was entitled to take for condition broken'."

In 1926 the Irish Court of Appeal in the case of *Walsh and Others* v. *Wightmanand Arthur*[7] cited with approval the judgment of Palles C.B. after considering the English authorities which arrived at a different conclusion. Andrews L.J. after considering at length the English authorities and *Attorney-General* v. *Cummins* and the views of the leading text book writers said at page 15: —

"In the conflict of judicial authority which has arisen and on the clash of opinion of the leading text book writers of the day, I unhesitatingly adopt the judgment of the Lord Chief Baron (Palles C.B.) which commends itself to my acceptance on both historical and logical grounds."

On our part, we would also accept the judgment of Palles C. B. and, accordingly, our answer to this question is in the negative.

Question (ii)(b)

Mr. Graham Hill concedes, in our opinion rightly so, that the Rule against Perpetuities applies to equitable rights to enforce a covenant for a re-conveyance against the land owner who is successor in title of the covenantor and the answer to this question is in the affirmative.

Question (ii)(c)

On this question there is a dearth of authority and apparently the English courts never had to decide whether the Rule against Perpetuities applies to conditions or limitations contained in a grant by the Crown. In apparently the only reported case before it, the Judicial Committee of the Privy Council, (*Cooper* v. *Stuart*[8]) on an appeal from the Supreme Court of New South Wales, Australia, the point was raised in argument but not decided. The judgment of the Privy Council at page 290 alluded to it in the following terms: —

"They (the respondent's counsel) maintained that there is no authority for extending the rule (against perpetuities) to a Crown grant in England; and pointed out that the Crown may lawfully annex a condition against alienation on a grant of fee, and other conditions which are not competent to a private person. They argued also that, although the rule had been applied to conveyances operating under the Statute of Uses, it had not been applied to common law conditions, or conditional limitations in common law grants which existed before that statute.

It does not appear to their Lordships to be necessary, for the purposes of the present case, to decide whether the Crown, in attaching such reservations to grants of land in England, would be affected by the rule against perpetuities."

In *Cooper* v. *Stuart*[9] the Court of Appeal of the Supreme Court of New South Wales was considering the question whether a Crown grant made in 1823, of 1400 acres of land, in which was made a reservation of "... any quantity of land not exceeding 10 acres in any part of the said land as might be required for public purposes" was valid and not void as an infringement of the Rule against Perpetuities. All the three members of the court were of the opinion that the rule would not bind the Crown applying the maxim *"Nullum tempus occurrit regi"*.

The Privy Council dismissed the appeal and held, assuming the Crown to be affected by the rule, that it was nevertheless inapplicable, in the year 1823, to Crown grants of land is the Colony of New South Wales, or to reservations or defeasances in such grants to take effect on some contingency more or less remote, and only when necessary for the public good. The reasoning behind the decision is set out in the judgment delivered by Lord Watson (page 293):—

"The rule against perpetuities, as applied to persons and gifts of a private character, though not finally settled in all its details, until a comparatively recent date, is, in its principle, an important feature of the common law of England. To that extent it appears to be founded upon plain considerations of policy, and, in some shape or other, finds a place in most, if not in all, complete systems of jurisprudence. Their Lordships see no reason to suppose that the rule so, limited, is not required in New South Wales by the same considerations which have led to its introduction here, or that its operation in that Colony would be less beneficial than in England. The learned judges of the Supreme Court of the Colony, in deciding this case, proceeded on the assumption that the rule applies there as between subject and subject; and their Lordships are of opinion that the assumption is well founded. Assuming next (but for the purposes of this argument only) that the rule has, in England, been extended to the Crown, its suitability, when so applied, to the necessities of a young Colony raises a very different question. The object of the Government, in giving off public lands to settlers, is not so much to dispose of the land to pecuniary profit as to attract other colonists. It is simply impossible to foresee what land will be required for public uses before the immigrants arrive who are to constitute the public. Their prospective wants can only be provided for in two ways, either by reserving from settlement portions of land, which may prove to be useless for the purpose for which they are reserved, or by making grants of land in settlement, retaining the right to resume such parts as may be found necessary for the uses of an increased population. To adopt the first of these methods might tend to defeat the very objects which it is the duty of a colonial governor to promote; and a rule which rests on considerations of public policy cannot be said to be reasonably applied when its application may probably lead to that result."

In this country the courts have long held that the rule applies as against subject and subject but have never been called upon to decide whether it applies to the Crown. The passage just quoted is of assistance in deciding whether or not the rule is applicable to the original Crown grant in 1860 containing the condition in question. Both New South Wales and Singapore were formerly colonies of the English Crown. Both Crown grants were made during the early years of colonisation. Both colonies at the date of colonisation were extremely sparsely populated. In both grants conditions were annexed to enable the land or part of the land granted to revert to the Crown should it at any time be required for public purposes. The one material difference between the two grants is that the New South Wales grant was in the nature of a gift whereas in the Singapore grant the consideration was $1400. The other circumstance which is different is territorial in that Singapore is extremely small in size compared to New South Wales.

Having regard to these considerations, we are of the opinion, adopting the reasoning behind the decision of the Privy Council in *Cooper* v. *Stuart*, *supra*, that the Rule against Perpetuities was inapplicable in the year 1860 to the original Crown grant in question. Our answer to this question, accordingly, is in the negative.

Question (iii)

It is not in dispute that the answer to this question is in the negative.

Question (iv)

The appellant concedes that the burden of proof is on him.

Question (v)

There are two questions to be considered. The first, on the assumption that the appellant had no actual notice of the provision in the original Crown grant, is whether or not he has constructive notice thereof. It is not in dispute that the question of notice, actual or constructive, is wholly immaterial if the provision constitutes a common law condition.

Mr. Graham Hill for the respondent relies on the well established doctrine that notice of any deed essential to the vendor's title is notice of its contents. In *Hooper* v. *Bromet*,[10] Farwell J. said at page 38: —

"To my mind, when a man has notice of a deed he is affected by notice of its contents. If he does not find it out by obtaining production of the deed, he is at fault. In *Patman* v. *Harland* (17 Ch.D. 353) Jessel M.R. says at p. 356 '... Con-

structive notice of a deed is constructive notice of its contents, subject to what I am going to say presently. If, therefore, you have notice of a deed relating to the title, you have notice of the contents of the deed, and it is no excuse for not asking to look at it to say you were told that the deed contained nothing that it was necessary for you to look at. otherwise in every case you might be satisfied with a statement of the contents of a deed without going to look at it. Of course there may be cases where the deed cannot be got at, or for some other reason where, with the exercise of all the prudence in the world, you cannot see it, and then there may be no constructive notice affecting the title, but that is another question."

Mr. Graham Hill submits that the appellant's contention that the title deduced in 1951 when the appellant and another purchased the land began with the Conveyance of 1878 from the original grantee to the then purchaser, is no answer because the 1878 Conveyance is not a self-contained root of title since it identifies the property conveyed by reference to the boundaries shown in the plan endorsed on the original Crown grant of 1860 and the same method was adopted again in 1951 when the appellant and another purchased the land. Mr. Graham Hill argues that the plan was thus incorporated in the Conveyance of 1878, and that clearly no abstract of the latter would have been sufficient without a copy of the plan notwithstanding section 3(5) of the Conveyancing and Law of Property Act (Cap. 268) the material provisions of which read thus: —

"S.3(5). A purchaser of any property shall not be entitled to require the production, or any abstract or copy, of any deed ... or other instrument dated or made before the time prescribed by law ... for commencement of title. ..."

In support of his argument he relies on the case of *Llewellyn* v. *Jersey*.[11] In that case Parke, B. with whose judgment the other judges concurred, said: —

"That deed recites a contract for the sale of certain lands, by a description corresponding with that subsequently contained in the deed, and then proceeds to convey them, with a reference for that description to three schedules. The portion of the particular schedule (the third) which relates to the piece in question, states it, in the first column, which is headed 'No. on the plan of the Briton Ferry Estate,' to be '153 b'; in the second (189) column, under the heading 'Description of premises', it is stated to be 'a small piece marked on the plan'; in the third, it is described as being in the possession of John Elrington; and in the fourth, as containing 34 perches. Now it appears to me that this case may be determined by the application of two well-known maxims of law. The first is, that 'verba relata inesse videntur'; according to which, we must consider it to be the same thing here, as if the map or plan, which is there referred to, had been actually inserted in the deed."

We accept the respondent's contention that the appellant had constructive notice of the provision in the original Crown grant and in our opinion the answer to this part of the question is in the affirmative.

The second question is whether or not the appellant is bound in view of the non-registration of the original Crown grant. Mr. Graham Hill for the respondent contends that the 1860 Crown grant is not capable of registration in the Registry of Deeds. At the date of the grant there was in force in Singapore the Indian Act XXI of 1839, Section XI, Clause First of which reads as follows:—

"XI. Clause First. — All mutations by act of party or by succession in titles to land taking place after the first day of January in the year of our Lord 1840 shall be registered under the following rules."

Clause Fifth of Section XI reads as follows:—

"Clause Fifth. — The registry of a mutation shall not of itself be taken to convey or establish any legal title to land, nor shall it be held to corroborate quality or bar any rights which may come to be questioned judicially. But no deed whatsoever for the sale or transfer of land which may be executed after the first day of January, in the year of our Lord 1840 shall be admitted to be valid by the officers of Government or be received in evidence as a legal instrument by any court of judicature unless the same shall have been registered in the Collector's Office in the manner directed by this section, nor shall any Probate or Letters of Administration be received as evidence of title to land, until so registered."

In our opinion, the original Crown grant to Angus in 1860 comes within the expression "mutations by act of party" in the First Clause and also within the expression "no deed whatsoever" in the Fifth Clause of Section XI of the 1839 Indian Act which was in force in 1860. In our opinion the Crown then was bound "to register in the Collector's Office in the manner directed by this Section" before it could successfully ask "any Court of Judicature" to receive the deed in evidence as a legal instrument.

Mr. Graham Hill contends, also, that section 4 of the present Registration of Deeds Act (Cap. 281) which superseded the 1839 Indian Act does not bind the Government by reason of section 55 of the Interpretation Act (Cap. 3) which provides that:—

"No Act shall in any manner whatsoever affect the rights of the Government unless it is therein expressly provided, or unless it appears by necessary implication that the Government is bound thereby."

Section 4 of the Registration of Deeds Act (Cap. 281) provides that:—

"4. From and after the commencement of this Act and subject to this Act and any rules made thereunder, all assurances thereafter or theretofore executed or made, and all probates and letters of administration thereafter or theretofore granted, by which any land within Singapore is affected and which have not been registered under the Registration of Deeds Ordinance, 1886, may be registered in such manner as is hereinafter directed, and unless and until so registered shall not be admissible in any court as evidence of title to such land."

The expression "assurance" is defined in section 3 to include "any conveyance" and the expression "conveyance" is defined to include "any assignment ... made by deed on a sale ... of any land...". In our opinion the original Crown grant of 1860 is clearly an "assurance" and the Government is by necessary implication bound by the provisions of section 4 of the Registration of Deeds Act and indeed by the whole Act. Accordingly, our answer to the second part of Question (v) is in the negative.

Question (vi)

The appellant concedes that the rights of the Secretary of State for India in Council under the original Crown grant are now vested in the independent Republic of Singapore and can be executed by the Government of Singapore.

Question (vii)

The words in the provision in the original Crown grant to be construed read as follows:—

"All sum or sums of money that the said Gilbert Angus His Heirs Administrators Executors or Assigns may or shall have incurred expended upon the said land."

The appellant contends that on their true construction the above words mean the purchase price paid by the owner at the time of the exercise by the Government of the right to re-purchase the land for public purposes together with any sum or sums of

money he has expended upon the land. The respondent, on the other hand, contends that the words must be given their ordinary meaning so that the State's obligation as successor to the Crown is to repay only what the original grantee and his successors in title have collectively "incurred expended upon the said land". The respondent's argument is that these words mean the total of the sums of money proved to have been actually spent on the land as a piece of property by the original grantee and his successors in title and thus the price will include the original purchase money and all moneys spent on the construction, improvement and maintenance of building, jetties, seawalls, drains and other structures on the land.

In our judgment the appellant's contention is correct and gives effect to the intention of the parties to the original grant as expressed in the words to be construed. The answer to this question is that the said words should be construed to mean the actual purchase price paid by the owner at the time of the exercise by the Government of the right of re-purchase and any other sum or sums of money he has subsequently expended upon the land.

Order accordingly.

Solicitors: *Mallal & Namazie; Rodyk & Davidson.*

HANS L. SIMON v. GEOFFREY JOHN TAYLOR & ORS.

[O.C.J. (Chua J.) October 24, 1974]
[Singapore — Originating Summons No. 43 of 1973]

Shipping — Submarine sunk in International waters — Mercury recovered from sunken submarine and brought to Singapore — Whether mercury is derelict — Whether Federal Republic of Germany succeeds to rights of German State — Rights of divers who recovered mercury — Whether they are salvors.

International Law — Sunken U-boat belonging to German State — Whether German State continued by Federal German Republic.

In this case it appeared that some mercury was recovered from the German submarine U 859 which sank during the second world war in 1944 and which was lying at the bottom of the high seas in the Straits of Malacca, approximately 25 miles north of the island of Penang. The mercury was brought to Singapore and was taken possession of by the Receiver of Wreck. The mercury was claimed by the Federal Republic of Germany and by the defendants, who had recovered it from the U-boat. The Federal German Republic transferred its right to ownership of the U-boat and the cargo to the plaintiff.

Held: (1) in this case when the U 859 was torpedoed by the British submarine there was no abandonment by the commander and crew of the U 859 to make it *res derelicta* as the commander and crew did not form or had the intention to abandon the submarine. The U 859 (including its cargo) was therefore not derelict in the legal sense of the term;

(2) the correct view is that the German State now survives or is identical with or is continued by the Federal Republic of Germany;

(3) the divers in this case were not salvors and were not entitled to salvage reward;

(4) the defendants had not established that they were entitled to the ownership or lien or possession of the mercury but on the other hand the plaintiff had clearly established that he was the owner of the mercury and was entitled to possession of it.

"Salvage" and "salvage services" discussed.

Cases referred to:-

(1) *Bradley* v. *Newson* 14 Asp. Mar. Law Cas. 340.
(2) *Lady Worsley* 164 E.R. 417.

ORIGINATING SUMMONS.

M. *Karthigesu* (*S. Selvadurai* with him) for the plaintiff.

S. Santhiran for the first four defendants.

Dr. Thio Siu Mien for the fifth and sixth defendants.

Chua J.: In March, 1972, representations were made by the Embassy of the Federal Republic of Germany that some of the mercury recovered from the German submarine U 859, which sank during the second world war in 1944 and which was lying at the bottom of the high seas in the Straits of Malacca, approximately 25 miles north of the island of Penang, was brought into Singapore and that the Federal Republic of Germany claimed ownership of the mercury.

The Receiver of Wreck caused an investigation to be made and it was ascertained from Contract Services Ltd. that about 3½ tons of mercury from the U 859 was brought into Singapore. Whereupon the Receiver of Wreck requested Contract Services Ltd. to deliver the mercury to him which was done in April, 1972.

The Receiver of Wreck, having taken possession of the mercury, caused a notice in accordance with section 314 of the Merchant Shipping Act to be posted at the office of the Director of Marine on April 20, 1972.

Claims to the ownership and/or a lien of the mercury were made by (1) the German Embassy on behalf of its Government; (2) Contract Services Ltd. and Evermore Marine Technical Services (Pte) Ltd. jointly; (3) G. J. Taylor, H. R. Leishman, J. C. W. Bastian and A. S. Dickie jointly.

In July, 1972, the Germany Embassy informed the Singapore Government that the Government of the Federal Republic of Germany has transferred its right to ownership of the submarine U 859 and its cargo, including the mercury, to Hans L. Simon. In the same month Hans L. Simon wrote to the Receiver of Wreck claiming ownership of the mercury.

In February, 1973, the Attorney-General on behalf of the Receiver of Wreck applied to the court for relief by way of interpleader and the claimants were named defendants.

By an order of court dated the February 26, 1973, it was ordered that the defendants proceed to trial in the High Court of an issue in which Hans L. Simon shall be the plaintiff and the other claimants shall be the defendants, the issue being, which of the parties is entitled to the ownership/lien/possession of the mercury.

The following facts emerged from the evidence. The German submarine U 859 was sunk in 1944 in the Straits of Malacca off Penang by a British submarine and is now lying at the bottom of the sea in international waters. There were few survivors.

The Associated Salvage Sendirian Berhad (hereinafter referred to as "the A.S.S.B.") was a company registered in Malaysia and had its registered office at